IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

OP.No. 36049 of 2000(N)

PETITIONER:

P. SREEDHARAN,
SECTION OFFICER,
PAREEKSHA BHAVAN,
UNIVERSITY OF CALICUT,
CALICUT UNIVERSITY.P.O.

BY ADV. SRI.P.V.SURENDRANATH,
SRI.E.G.GORDEN.

RESPONDENTS:
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1. **CALICUT UNIVERSITY,**
REPRESENTED BY ITS REGISTRAR,
CALICUT UNIVERSITY.P.O.,
THENJIPPALAM.

2. **VICE CHANCELLOR,**
CALICUT UNIVERSITY,
THENJIPPALAM.

BY ADV. SRI.S.GOPAKUMARAN NAIR, SC, CALICUT UTY.,
SRI. P.C. SASIDHARAN.SC.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 61471/2000 IN O.P. NO. 36049/2000

DISMISSED

14/06/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE JUDGEMENT IN O.P. NO. 2810/1994 DTD. 26/10/1999.

EXT.P.2: COPY OF THE APPOINTMENT ORDER DTD. 22/12/99.

EXT.P.3: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DTD. 15/02/2000.

EXT.P.4: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DTD. 13/07/2000.

//TRUE COPY//

prv.

Thottathil B. Radhakrishnan, J.

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O.P.No.36049 of 2000

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Dated this the 14th day of June, 2007.

JUDGMENT

Petitioner was included in a list prepared and published on 23-3-1991 for special recruitment from among the members of Scheduled Castes and Scheduled Tribes. He filed O.P.No.2810 of 1994 before this Court alleging that he was not being appointed. He sought for a writ commanding the University to appoint him as Section Officer and for a direction that the number of posts to be filled by Scheduled Castes and Scheduled Tribes be set apart for direct recruitment from the list prepared and published from 23-3-1991. That original petition was allowed issuing a mandamus as per Ext.P1 judgment, directing the respondents to appoint the petitioner as Section Officer in the University forthwith. The petitioner was accordingly appointed as Section Officer as per Ext.P2 and he assumed charge from which date he was on one year of probation within a continuous period of two years.

2. This writ petition, with the University and the Vice chancellor as the only respondents, is filed on 21-12-2000 contending that the petitioner's appointment is entitled to be ear-marked against a vacancy referable to 1991 and therefore, he is entitled to be assigned the date of appointment retrospectively from 1991.

3. In the writ petition that led to Ext.P1 judgment, the direction was only to appoint the petitioner as Section Officer. In that writ petition, petitioner had agitated his entitlement to be appointed from a list of the year 1991. If that be so, any cause of action referable to his entitlement to any retrospective assignment of date of entry into service, as now contended by the writ petitioner, is a matter that might and ought to have been raised in the writ petition that led to Ext.P1 judgment. Therefore, even if it were not raised and decided, such issue has to be treated as constructively concluded against the petitioner. If it was, as a matter of fact, raised,

then Ext.P1 judgment is to be taken as one which did not grant him that relief. The principles of res judicata, including that of constructive res judicata, is a matter of public policy, which finds expressions to ensure that issues get concluded and not to be agitated piece-meal or to be agitated again and again. By now, it is well settled that the principles of res judicata, including constructive res judicata, are applicable to writ proceedings. For this short ground, this writ petition has to fail.

4. Yet another aspect to be noticed is that, if this Court were to order assignment of a particular date as the date of entry of the petitioner into service of the University retrospectively, though he joined service only on the basis of Ext.P2, such a decision would affect the rights of other inservice candidates in relation to seniority. None of them is here as respondent. They are entitled to be heard. The question of fixation of inter se seniority may also be relevant when the employer University publishes the

seniority list. Therefore, it would be wholly inappropriate for this Court to enter into an adjudication on that question without any of the affected parties being on the array.

For the foregoing reasons, this writ petition fails. The same is hence dismissed. No costs.

Thottathil B.Radhakrishnan,
Judge.

sl.

Thottathil B. Radhakrishnan, J.

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O.P.No.36049 of 2000

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JUDGMENT

Dated:14-6-2007